IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.18 OF 2001
with
Suo Motu Contempt Petition No.6 of 2001 and
Miscellaneous Civil Application No.383 of 2001.

Mr. P.V. Joseph,
major in age, presently
residing at Panzarkone,
Cuncolim, Salcete,Goa..... PETITIONER

VERSUS

1. State of Goa
   through the Chief Secretary,
   Secretariat,
   Panaji, Goa;

2. Director of Education,
   Education Department,
   18th June Road,
   Panaji, Goa;

3. Vidyamandir High School,
   through its Manager,
   Adarshnagar, Airport Road,
   Chicalim, Vasco-da-Gama..... RESPONDENTS

Shri Devidas Pangam and Shri Vallabh Pangam,
Advocates for the Petitioner.

Shri H.R. Bharne, Government Advocate, for the
Respondents No.1 and 2.

Shri S.N. Kerkar, Advocate for the Respondent No.3.

CORAM : S. RADHAKRISHNAN &
P.V. HARDAS,JJ.

DATED : AUGUST 27, 2002.

ORAL JUDGMENT (PER **S. RADHAKRISHNAN,J.**)

Heard the learned Counsel for the Petitioner and for the Respondents.

2. By this Petition, the Petitioner is seeking a Writ of Mandamus directing the Respondents to implement the Order dated 7th May, 1997 in Writ Petition No.289 of 1990 and pay the arrears to the Petitioner forthwith. By way of amendment in this Petition, the Petitioner is also praying for arrears of salary taking into account increments for the period from 19-10-1981 to 15-1-1985 and to pay the said arrears with 18% interest per annum. The Petitioner is also praying for a reasonable compensation and costs for not implementing the aforesaid Order dated 7th May, 1997.

3. The brief facts are that the Petitioner had joined St. Aloysius High School as an Assistant Teacher in 1971 and in 1976 he was confirmed as a permanent Asst. Teacher. It appears that on 15th June 1979 the Petitioner became eligible for grant of Selection Grade. Accordingly, St. Aloysius High School had granted Selection Grade, which was approved by the Director of Education. In the year 1981, the Petitioner had applied to the Government of

India to go abroad on a foreign assignment. In that year, the Petitioner had applied to St. Aloysius High School for Extraordinary Leave for a period of 5 years to go on foreign assignment to teach in a Nigerian School where the salary for the said period of 5 years was to be borne by the Nigerian Government and not by the St. Aloysius High School. In fact, this was made clear by letter issued by St. Aloysius High School, Cuncolim dated 4th May 1981 whereby it is clearly mentioned that the Management has no objection to grant Extraordinary Leave for a period of 5 years to the Petitioner, however, the Petitioner will not be entitled to claim any leave salary during the said period. It appears that after completing the said foreign assignment, the Petitioner came back to the said School when he was informed on 11th October,1989 that the Petitioner had lost his seniority and also the Selection Grade which was granted also stood withdrawn by Respondents No.1 and 2 herein. Pursuant to the same, the Respondents No.1 and 2 had also sought to recover an amount of Rs.44,480/- which was already paid to the Petitioner in view of the fact that the Petitioner was granted the said Selection Grade. The said amount was ordered to be recovered in monthly instalments of Rs.1000/-.

4. Aggrieved thereby, the Petitioner had filed Writ Petition in this Court being Writ Petition No.289 of 1990 challenging the aforesaid withdrawal of the Selection Grade as well as his seniority and the order of recovery of a sum of Rs.44,480/- by monthly instalments of Rs.1000/-. The above referred to Writ Petition No.289 of 1990 was finally heard and disposed of by a judgment of our High Court on 7th May 1997 holding that the Government had no powers to withdraw the Selection Grade sanctioned to the Petitioner which he was entitled to from 15th June 1976. In view thereof, the impugned Order dated 11th October,1989 was quashed and set aside. As far as the seniority dispute between the Petitioner and another Teacher was concerned, the said issue was left open.

5. It appears that after the said judgment, the Petitioner had written a letter on 15th October,1997 to the Director of Education seeking payment of arrears based on the said Selection Grade. Again a reminder was sent in July 1998. Finally a lawyer's notice was sent in June 1999. Thereupon, the deputy Director of Education had assured the Petitioner that the judgment of this Court dated 7th May 1997 would be implemented. Finally, the Petitioner filed the present Petition on 10th

November 2000 praying for the reliefs stated hereinabove. It appears that the Respondent No.2 had released a sum of Rs.2,36,730/- out of which, after deducting the income tax amount of Rs.78,000/-, the balance amount of Rs.1,58,730-24 was paid to the Petitioner on 30th January, 2001 being the arrears payable.

6. At the time when this Petition was admitted on 27th March 2001, this Court also prima facie found that the Respondents No.2 and 3 should submit their explanation as to why suo motu contempt proceedings should not be initiated by this Court against them for the delayed payment of arrears. To the aforesaid notice, a detailed Affidavits have been filed by both Respondent No.2 as well as Respondent No.3.

7. The main grievance of the Petitioner in this Petition is that there has been a delay of more than three years in paying the arrears as per the Order dated 7th May 1997 passed by this Court. The learned Counsel for the Petitioner contends that the Respondents have been grossly negligent and did not pay the dues in time and, as such, the Petitioner is entitled to claim interest. In addition thereto, the Petitioner has also claimed that the Petitioner is

entitled to increment for the five years when the Petitioner was abroad in Nigeria, that is to say, during the period from 19-10-1981 to 15-1-1985. The Petitioner ought to be granted increments and accordingly salary ought to be calculated and the said arrears along with 18% interest ought to be paid to the Petitioner. Shri Pangam appearing on behalf of the Petitioner contended that though this Court had passed the Order on 7th May, 1997 in Writ Petition No.289 of 1990, the Respondents did not bother to pay the arrears till January 2001. There is no reasonable explanation and that the Respondents have been wilfully negligent and, as such, the Petitioner is entitled to claim interest for the delayed payment. Accordingly, the learned Counsel for the Petitioner prayed that this Court ought to direct the Respondents No.2 and 3 to pay interest at the rate of 18% on the aforesaid amount of Rs.1,58,713-24 and also in addition arrears of salary based on increments which ought to have been paid for the period from 19-10-1981 to 15-1-1985 during the period in which the Petitioner was in Nigeria.

8. The learned Government Advocate Shri Bharne at the outset pointed out that when the show cause notice was issued by this Court when the above Petition was admitted on 27th March 2001, the

Respondents Nos. 2 and 3 have filed detailed Affidavits pointing out the circumstances why the delay had taken place. Mr. Bharne referred to the Affidavit of Dr. M. Modassir, Director of Education, dated 9th April 2000. In Paragraph 7 it is clearly stated that as soon as the Department received the letter of the Petitioner dated 15th October 1997, the Department immediately directed the Management of the St.Aloysius High School to verify the service record and furnish all the details of the claim made by the Petitioner at the earliest. It may be noted here that at the relevant time when the Writ Petition No.289 of 1990 was filed, the Petitioner was working in St. Aloysius High School. Thereafter, the said School came to be closed on 4-1-1995. Thereupon, the Petitioner was absorbed in Vidyamandir High School. It appears that inspite of the aforesaid letter, the Education Department did not receive any reply. Again the Department wrote a letter dated 5th January 1998 and a further reminder dated 7th May 1998. Finally, the said Respondent No.3 School responded by letter dated 2nd May 1998 mentioning therein that the Petitioner's service book was found to be incomplete and, as such, the request of the Department could not be complied with. Then,the Department again issued letter dated 27th May 1998 asking the Assistant Director of Education

to complete the service book of the Petitioner and send the same to Respondent No.3 for further necessary action. It appears that inspite of the demand, the erstwhile School (i.e. St. Aloysius High School) had failed to hand over the past records. As such, the service book of the Petitioner could not be completed. Though the incomplete service book was made available by Respondent No.3 even then the Department could not proceed further. Again, the Education Department addressed a further letter to the Assistant Director of Education on 27th July 1998 whereby the Respondent No.3 was issued directions to complete the service book. Even then the same could not be completed since the pay fixation statements had to be redone. In Paragraph 19 of the aforesaid Affidavit it is categorically mentioned that the primary reason for non-settling the claim was essentially because of the Management of the erstwhile School which was not diligent in maintaining the service record of the Petitioner and finally the Department had to arrange to have the record completed after summoning the Manager of the erstwhile School along with the relevant record. Again the Department had sent a letter on 4th April 2000 addressed to the Deputy Education Officer, South Educational Zone, Margao, to ensure that the Management of Respondent No.3 complied with the

instructions to settle the claim of the Petitioner and report compliance on or before 13th April, 2000. Finally, the Respondent No.3 complied with the instructions contained in the letter dated 6th July, 1999 and appropriate Pay Fixation statements were also sent duly approved. The Respondent No.3 School by letter dated 4th January 2001 had preferred a claim for Rs.2,36,730/- towards the Petitioner's dues. In accordance therewith, the Department promptly prepared a cheque dated 10th January 2001 for the aforesaid amount and forwarded the same which amount finally came to be paid over to the Petitioner on 30th January,2001, after deducting the income tax amount of Rs.78,000/-. In the said Affidavit, copies of the relevant correspondence have also been annexed. The learned Government Advocate,therefore, submits that the Respondent NO.2 has taken all necessary steps repeatedly to settle the Petitioner's claim. The main difficulty in the instant case was that the erstwhile School, St. Aloysius High School where the Petitioner was earlier working, came to be closed down and all the relevant records still remained with the said School and the service book was incomplete. Only after the tracing of the Manager of the erstwhile School, the said service book could be completed and as soon as the claim was made by Respondent No.3, the amount was also released

by Respondent No.2 and as such the learned Government Advocate submits that there was no wilful negligence or want of bonafides on the part of Respondent No.2 in settling or paying the dues to the Petitioner. As indicated in the said Affidavit, the learned Government Advocate pointed out that repeatedly the Respondent No.2 has been following the matter and finally got the matter settled.

9. The learned Counsel appearing for Respondent No.3 also referred to the Affidavit on behalf of Respondent No.3 dated 30th June,2001 wherein also it is pointed out that as the service book was incomplete the Respondent No.3 could not process the matter further, in view of the pay-scale fixation having to be done without which the dues cannot be computed. Finally, it appears that when the Respondent No.3 received a letter on 13th December 2000 mentioning that the pay fixation has been approved and immediately thereupon the School by letter dated 16th December 2000 requested the Management of th erstwhile St. Aloysius High School to send the statement of actual pay and allowances drawn by the Petitioner from 15th June,1979 to 3rd January 1985 and finally appropriate bill was raised and sent to Respondent No.2. In Para 13 of the Affidavit it is mentioned that the bill was prepared

and sent to Margao Zonal Office and it was brought back on the same day, i.e. 29th January, 2001 and on the very next day i.e. 30th January 2001 the amount was disbursed to the Petitioner after deducting the income tax of Rs.78,000/-. In view thereof, the learned Counsel for Respondent No.3 submits that there has not been any wilful negligence or carelessness or want of bonafides on the part of the Respondent No.3 in not processing the claim of the Petitioner with regard the arrears payable.

10. As far as the issue of increments during the period from 19th October,1981 to 15th June,1985 is concerned, it should be noted here that the Petitioner had voluntarily opted for a foreign assignment with the Nigerian Government to teach in a Nigerian School to which the Petitioner's erstwhile School, St. Aloysius High School had consented and had granted the Petitioner Extraordinary Leave for a period of 5 years by their letter dated 4th May,1981, but had made it clear that the Petitioner will not be entitled to any leave salary during the said period. Therefore, the submission of the learned Counsel for the Respondent No.3 is that as the Petitioner has not drawn salary for that period neither from St. Aloysius High School nor from the Education Department, hence there is no question of grant of

any increment during that period. The learned Counsel for the Petitioner had in that behalf referred to Fundamental Rule 26(b)(ii) which reads as under:-

> "F.R.26. The following provisions prescribe the conditions on which service counts for increments in a time-scale:-
>
> (a).... ....
>
> (b)(i).... ....
>
> (ii) All leave except extra-ordinary leave taken otherwise than on medical certificate and the period of deputation out of India shall count for increment in the time-scale applicable to a post in which a Government servant was officiating at the time he proceeded on leave or deputation out of India and would have continued to officiate but for his proceeding on leave or deputation out of India:
>
> Provided that the President may, in any case, in which he is satisfied that the extraordinary leave was taken for any cause beyond the Government servant's control or for prosecuting higher scientific and technical studies, direct that extraordinary leave shall be

counted for increments under Clause (i) or (ii)."

11. However, as in this case it is clear that the Petitioner was during the period of 5 years working under the Nigerian Government in a Nigerian High School and the salaries had been paid by the Nigerian Government, the only protection afforded to the Petitioner was that of his lien over the job in St.Aloysius High School by grant of Extraordinary Leave for a period of 5 years. The learned Counsel also referred to a letter from the Government of India dated 18th September, 1981 which mentions that the Government has no objection that the candidate being treated as on deputation to the foreign Government in public department with lien retained on the post held by him. This letter has been issued to enable the Petitioner to obtain a passport from the nearest Regional Passport Officer. This letter will not be of any assistance to the Petitioner. The fact is that the Petitioner did not receive any salary either from the Education Department or from St. Aloysius High School and he was only granted Extraordinary Leave for a period of 5 years. Even otherwise, the aforesaid Fundamental Rule 26(b)(ii) relied upon by the learned Counsel for the Petitioner could be of no assistance to the Petitioner inasmuch as the Fundamental Rule 26 (b)(ii) itself makes it clear that the Petitioner is not entitled to any such

increment.

12. The learned Counsel for the Petitioner also referred to some judgments of the Apex Court and our High Court. The first judgment is **Vijay L. Mehrotra v. State of U.P. and others (2001) SCC 687;** the second judgment referred to is the judgment of our High Court in **Eurico Santana Da Silva v. State of Maharashtra (1997 LAB.I.C.313);** the third case referred to is that of the Supreme Court in **Life Insurance Corporation of India and another v. Gangadhar Vishwanath Ranade [(1989) 4 SCC 297];** the fourth judgment is that of **State of Kerala and others v. M. Padmanabhan Nair [(1985) 1 SCC 429]** and the fifth judgment is **Devaki Nandan Prasad v. State of Bihar & ors. [(1983)4 SCC 20].**

13. The first judgment in the case of **Vijay L. Mehrotra,** the Supreme Court was dealing with the issue of payment of retirement benefits wherein the Apex Court had clearly held that in case of retirement benefits, the retirement benefits had to be paid expeditiously and if there is delay in settling the same, the person concerned is entitled to claim interest. In the present case, in fact, the Petitioner received the arrears payable in or around 31st January 2001 while he was very much in service

and the Petitioner had retired only at the end of the year 2001. Therefore, the above principle laid down by the Supreme Court judgment will not apply inasmuch as the amount due and payable was not terminal benefits as laid down in the above judgment. Similarly, the judgment of our High Court in **Eurico Santana Da Silva's** case will also not apply in the instant case since the above case was dealing with the payment of pension and other terminal benefits. As far as the third case referred to by the learned Counsel for the Petitioner, **Life Insurance Corporation of India and another v. Gangadhar Vishwanath Ranade,** is concerned, in that case the Life Insurance Corporation was statutorily obliged to pay interest for the delay whereas there is no statutory obligation in the instant case. Similarly, the last two cases mentioned by the learned Counsel for the Petitioner, namely, **State of Kerala v. M. Padmanabhan Nair and Devaki Nandan Prasad v. State of Bihar & ors.** also deal with the cases of non-payment of pension and other terminal benefits expeditiously. In the present case, the amount payable was not terminal benefits. As such, the above cases will be of no assistance to the Petitioner.

14. As far as the main issue regarding

interest on the arrears is concerned, as mentioned hereinabove, the Respondent No.2 had repeatedly taken it up with the Respondent No.3 as well as the erstwhile School to get the service record completed so as to enable the Respondent No.2 Department to release the payment to the Petitioner and unfortunately, as the erstwhile School was closed and records were incomplete, the same could not be done in time. This is not a case wherein one could saddle either the Respondent No.2 or Respondent No.3 with interest. The explanation tendered by both, Respondent Nos.2 and 3, appears to be reasonable and fair and hence we cannot saddle them with interest. Under these circumstances, we find no merit in the Petition.

15. Hence Rule is discharged, however with no order as to costs.

16. As far as the Suo Motu Contempt Petition is No.6 of 2001 is concerned, in view of the Affidavits filed by the Respondent No.2 as well as Respondent No. 3, we find the explanation tendered therein to be reasonable and fair and we do not wish to proceed further and initiate any contempt action against the Respondents. As such Suo Motu Contempt Petition stands dismissed.

17. In view of the final disposal of the Writ Petition No.18 of 2001, nothing further survives in Miscellaneous Civil Application No.383 of 2001 and the same also stands dismissed.

S. RADHAKRISHNAN,J.

P.V. HARDAS,J.

ac.